

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.630 pertaining to temporary water)
quality standards)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On August 24, 2006, the Board of Environmental Review published MAR Notice No. 17-250 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1981, 2006 Montana Administrative Register, issue number 16.

2. The board has amended the rule exactly as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: ASARCO, LLC, would like to go on record as being opposed to the repeal, so that would be opposed to the adoption of this rule.

RESPONSE: Comment noted.

COMMENT NO. 2: While acknowledging that many of the delays can be attributed to ASARCO, commentor mentioned that some of the delays were due to the U.S. Forest Service (USFS) and/or DEQ. As a point of emphasis, the time taken for DEQ to approve the 2006 Reclamation Work Plan was used as an example of an inaction that impacted the IP schedule. The commentor stressed that "it becomes very difficult to do projects when you can't start them until October or November each year."

RESPONSE: The proposed rulemaking is not based on one instance of failure to comply with the implementation plan. The failures have been chronic. In addition, numerous remedial activities have not been completed in accordance with the implementation plan schedule, including (1) the mine waste reclamation plan and removal for the Lower Mike Horse Creek (scheduled for completion in 2003); (2) the dispersed floodplain tailings reclamation plan and removal for the Beartrap Creek drainage (scheduled for completion in 2004); (3) the mine waste and possible adit discharge reclamation plan and removal on the Flosse and Louise patented claim (scheduled for completion in 2004); (4) the concentrated tailings reclamation plan and removal for the Upper Blackfoot River drainage near the confluence with Shave Creek (scheduled for completion in 2005); (5) the dispersed floodplain tailings reclamation plan and removal for the Upper Blackfoot River drainage (scheduled for completion in 2005); and (6) Stevens Gulch reclamation plan (scheduled for completion in 2006).

COMMENT NO. 3: ASARCO states that the repeal of the temporary standards will have little effect on moving the project forward. ASARCO

acknowledged that the water treatment system will not meet B-1 standards and that that was known at the time of construction. ASARCO added that it is prepared, in the event that the department does choose to repeal the temporary permits, to install a mechanical water treatment system that will meet the new permit limits.

RESPONSE: Revocation of the temporary standards can help move the cleanup project forward. Revocation will allow the state to require the installation of an adequate water treatment system or other remedy that will comply with B-1 standards.

COMMENT NO. 4: ASARCO states that there will be adverse consequences as a result of the repeal of the temporary standards; these are no more state-wide sampling and the lack of a schedule will result in "a disincentive to people doing anything."

RESPONSE: We presume that ASARCO is referring to adverse impact to commitment to further work. However, state and federal agencies will continue to assume responsibility and will proceed with cleanup at the Upper Blackfoot Mining Complex (UBMC) regardless of the temporary standards status. All activities that would have been covered under the implementation plan will be required under CECRA, and may include, but are not limited to, the development of a remedial alternative that will address adit discharge to the point of compliance with B-1 standards, annual site-wide sampling, and a schedule to accomplish remedial objectives as they are identified under CECRA.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

/s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, December 11, 2006.